

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

DANIEL BARKHO, v.	Respondent
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BETH READY,	Respondent
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DOUGLAS READY.	Appellant
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DOCKET NUMBER WD79827

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 28, 2017

Appeal From:

Circuit Court of Callaway County, MO
The Honorable Gary M. Oxenhandler, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Anthony Rex Gabbert, and Edard R. Ardini, Jr., JJ.

Attorneys:

Jonathan Sternberg, Kansas City, MO	Counsel for Appellant
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Attorneys:

Joseph Holt, Fulton, MO	Counsel for Respondent, Barkho,
Kristen Dickinson, Columbia, MO	Counsel for Respondent, Ready

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**DANIEL BARKHO, Respondent, v.
BETH READY, Respondent, DOUGLAS READY, Appellant**

WD79827

Callaway County

Before Division One Judges: Welsh, P.J., Gabbert, and Ardini, JJ.

Douglas Ready appeals the circuit court’s judgment ordering specific performance of an oral contract for the purchase of land and ordering him to pay attorneys’ fees on behalf of Daniel Barkho and Beth Ready. Douglas contends that the circuit court erred (1) in finding that the parties had an oral contract for the sale of property that was not barred by the statute of frauds because the evidence was insufficient to prove “by clear and convincing evidence beyond a reasonable doubt” that the parties entered an oral contract for the purchase of the land and (2) in ordering specific performance of the alleged oral contract rather than restitution. In regard to attorneys’ fees, Douglas asserts that the circuit court erred in awarding Daniel and Beth attorneys’ fees under the “special circumstances” or “very unusual circumstances” exception to the American Rule or abused its discretion in ordering him to pay Daniel’s and Beth’s attorneys’ fees as a sanction under the court’s inherent powers.

Affirmed

Division One holds:

(1) The circuit court did not err in finding that the parties had an oral contract for the sale of property that was not barred by the statute of frauds. Equity will provide specific performance of an oral contract to convey land upon clear and convincing proof of the existence of contract, if a party has acted to such a degree upon the contract that denying the party the benefit of the agreement would be unjust. Moreover, the statute of frauds is not applicable to contracts which have been fully performed by one of the parties. All of the essential elements for a contract to convey the property were met in this case, and the evidence established that Daniel fully performed under the terms of the contract.

(2) The circuit court did not err in ordering specific performance of the oral contract to convey the property rather than restitution. The evidence established that Daniel fully performed under the terms of the contract, and because each parcel of land is unique, specific performance is ordinarily an appropriate remedy for breach of a contract to sell land.

(3) Given that the circuit court found and the evidence supported that Douglas’s actions were reckless, willful, and malicious, the circuit court did not abuse its discretion in ordering Douglas to pay Daniel’s and Beth’s attorney’s fees. We decline, however, Daniel’s and Beth’s requests for attorneys’ fees on appeal.

Opinion by James Edward Welsh, Presiding Judge

March 28, 2017

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